

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MICHAEL A. CLARK,)	
)	
Petitioner,)	
)	
v.)	No. 4:04CV1364 HEA
)	
DON ROPER,)	
)	
Respondent.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on Magistrate Judge Frederick R. Buckles Report and Recommendation, [#36], that Petitioner's Motion for Preliminary Injunction [#12] and Motion for Summary Judgment [#22] be denied, and Petitioner's Motion to Allow Service by Mail and Dispense with the Requirement of Security [#15] be denied as moot. Petitioner Clark has filed written objections to the Report and Recommendation. Pursuant to 28 U.S.C. § 636, the Court will therefore conduct a *de novo* review of those portions of the Report and Recommendation to which objections are made.

Petitioner Clark objects to Judge Buckle's finding that Petitioner's Motion for Preliminary Injunction should be denied. In his motion, Petitioner claims he has been denied access to the courts by the State of Missouri's refusal to provide him access to his own legal materials, which resulted in his inability to pursue appropriate legal remedies in state post-conviction proceedings and in civil rights and habeas

proceedings in federal court. Judge Buckles found that Petitioner's claims actually challenged the conditions of his confinement, rather than the fact he is confined, or the duration of such confinement. Such claims are more appropriately brought under a civil rights action pursuant to 42 U.S.C. § 1983 and are not cognizable in a habeas corpus proceeding under 28 U.S.C. § 2254. *Muhammad v. Close*, 540 U.S. 749 (2004). Judge Buckles determined that Petitioner failed to show that the Missouri's alleged failure to provide him his legal materials has interfered with his ability to pursue the instant habeas action, thus Petitioner's request for injunctive relief should be denied.

Petitioner objects to Judge Buckles findings and argues "the Magistrate does not have any authority to exercise any discretion therein under 28 U.S.C. 636(c)(1)" and has "misconstrued/twisted the legal facts and issues in this case in general as it relates to Petitioners (official request for a judicially crafted remedy) [sic]. . ." Petitioner continues in his filed objection, stating that the Magistrate Judge's report is "biased & prejudiced, (premature) and is favoritism to respondent in general." Petitioner, however, has not shown that his motion is a challenge to his confinement or the time to be served on his sentence and not a challenge to the conditions of his confinement. Petitioner has not shown that the State's alleged interference has had any prohibitive effect on the instant action, therefore, Petitioner's objection is overruled.

Petitioner makes no objection to Judge Buckles' recommendation that

Petitioner's Motion for Summary Judgment be denied, nor does he object to the recommendation that his Motion to Allow service by Mail and Dispense with the Requirement of Security, which was filed in relation to the Motion for Preliminary Injunction, be denied as moot. Therefore, the Court adopts Judge Buckles's well reasoned Report and Recommendation in its entirety.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion for Preliminary Injunction [#12] is denied;

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Judgment [#22] is denied;

IT IS FURTHER ORDERED that Petitioner's Motion to Allow service by Mail and Dispense with the Requirement of Security [#15] is denied as moot.

Dated this 23rd day of November, 2005.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE